

NCVO SUBMISSION TO THE THIRD PARTY CAMPAIGNING REVIEW

1. About NCVO

Established in 1919, the National Council of Voluntary Organisations (NCVO) represents over 11,000 organisations, from large ‘household name’ charities to small voluntary and community groups involved at the local level. NCVO champions voluntary action and our vision is of a society where we can all make a difference to the causes that we believe in. A vibrant voluntary and community sector deserves a strong voice and the best support. NCVO works to provide that support and voice.

2. Background to our submission

NCVO’s submission to this review is based on a survey open to NCVO members, which was carried out between 20th May and 15th July 2015. It is also informed by the knowledge and understanding of the issues that NCVO has acquired both through its policy work during the parliamentary debates, and through its extensive consultancy work to support members since the Act came into force.

3. Key issues

The survey highlighted the following aspects of the non-party campaigning rules are causing challenges to charities:

- the inadequacy of existing Electoral Commission guidance around Part Two of the Lobbying Act;
- the regulatory burden of monitoring regulated activities for the purposes of registration;
- the length of the regulated period;
- the rules on coalition campaigning;
- the definition of ‘active supporters’; and
- the definition of ‘controlled expenditure’;
- the cumulative ‘chilling effect’ of these issues on campaigning by charities.

4. Breakdown of the survey

The survey received 33 responses, 26 of which from large charities (income over £1m), six from medium charities (income between £100,000-1m) and one from a small charity (income of £100,000 or lower). The full range of questions and a breakdown of anonymised responses are included in Appendix 2.

The organisations responding represented a range of charitable purposes.

Two respondents indicated that they had registered as third party campaigners under the Lobbying Act. A further 12 considered registering but didn't, citing reasons such as:

- the Board could not come to a decision;
- the planned activity didn't meet the purpose test;
- campaigning activity was adapted so as not to fall under the Act because the regulatory burden would be crippling;
- the planned activity did not meet the spending limit over the time of the shorter regulated period.

The following sections will address in more detail the key issues outlined above.

5. Definition of 'controlled expenditure'

The main cause of concern is inherited from the previous PPERA legislation (Political Parties, Elections and Referendums Act) and the definition of 'controlled expenditure' as 'activity that could reasonably be regarded as intended to promote or procure the electoral success of a particular party or candidate'.

While we accept that the definition needs to be sufficiently broad in order to prevent deliberate circumvention of the rules, the level of uncertainty the current definition brings means that the question remains open whether or not legitimate non-partisan campaigning by charities and other voluntary groups, and awareness-raising on policy issues, would be caught by the rules even if they were not intended to have an electoral effect.

This difficulty is made even greater by the fact that, under the new rules, such definition has to be applied not only to 'election material' but to a whole range of activities, such as media events and press conferences, public events, etc.

6. Guidance

Many of the provisions in Part Two of the Lobbying Act are vague, making it a challenge for the Electoral Commission to develop useful guidance. Furthermore, on a number of aspects the Electoral Commission has produced overly broad guidance.

Although it is understandable that the Electoral Commission's priority is to prevent abuse, and it therefore needs sufficient scope to act on the basis of its guidance, many important parts of the guidance are too ambiguous and as such of limited help to charities. Our survey found that only 30% of respondents rated the guidance produced by the Electoral Commission as 'helpful'; we believe that the guidance should be much more practical in order to help charities navigate the Act.

A particular issue of confusion for charities is the interaction between the Charity Commission's guidance on campaigning and political activities (CC9) and the Electoral Commission's guidance for non-party campaigners. Our survey found that more than half (52%) of respondents were either not at all, or not particularly, confident about the difference between CC9 and the Electoral Commission's guidance for non-party campaigners. The same proportion of respondents had contacted the Electoral Commission or Charity Commission (or both) to seek further advice.

7. Regulatory Burden

NCVO's concerns about the regulatory burden of registering under the Act, which we highlighted when the Act became law, have been borne out by the experiences of our members.

A particular area of concern has been social media. According to guidance from the Electoral Commission, spending on social media is usually negligible but still regulated.¹ This has led to some NCVO members reporting that they have spent a disproportionate length of time monitoring their use of social media, for example by recording the time taken to send individual tweets.

In the survey, we asked respondents if they had put any additional measures into place because of the Act. The results showed that 94% put measures in place to monitor content on social media. 50% sought legal or external advice as a result of the Act, while 40% began monitoring staff time and checking spending on regulated activities.

NCVO believes that it is important for charities to ensure their messaging, including on social media, is monitored and does not cause reputational damage. However, the amount of measures that organisations felt the need to implement during the regulated period represent a significant regulatory burden for charities.

8. Length of the regulated period

NCVO's concerns about the regulated period being excessively long, expressed during the passage of the Act, have been confirmed by a number of survey responses.

In particular, organisations highlighted that:

- Their planned activity didn't meet the registration thresholds only because it was calculated over a shorter period, but once the full 12-month period comes into effect they are likely to have to register.

¹ <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners/faqs-for-non-party-campaigners-at-the-uk-parliamentary-general-election-in-may-2015>

- There is a discrepancy between the rules for third party campaigners and rules for candidates.

9. Coalition campaigning

Currently, it is possible for a registered non-party campaigner who is part of a joint campaign to report the joint campaign spend on behalf of all the non-party campaigners involved, and therefore act as the 'lead campaigner'. This is a proportionate solution to the problem existing under previous legislation, whereby each organisation involved in a joint campaign was required to account for the full incurred expenditure, regardless of their individual contribution.

Nevertheless, the rules on coalition campaigning continue to be problematic for charities and have hindered joint working. According to our survey responses, two organisations declined to take part in a coalition campaigning during the regulated period and four had reservations about taking part.

One respondent commented:

'Our fear was that the coalition could have been seen to pass the purpose test and therefore with our spend and us passing the purpose test both us and the coalition (which is made up of lots of self-advocacy groups) would have needed to register... When presenting plans to senior staff and trustees one of the first questions was always, "Does this meet the Lobbying Act?" We also felt more nervous at commenting in the media during the year and sometimes turned down opportunities to spread our message due to internal anxiety.'

This demonstrates how the uncertainty about which activities are regulated has an additional impact on charities' willingness to engage in joint campaigns.

10. The classification of committed supporters

NCVO found that many organisations are still uncertain about whether to classify someone as a supporter or a member of the public. Only half of survey respondents felt confident about the difference.

Ninety per cent of respondents changed the way they communicated with both supporters and members of the public during the regulated period. The majority altered their online communications (social media and email) and some also changed their direct mail and phone/face-to-face engagement. It is notable that everyone who responded to that question felt a need to change their social media policy, and again suggests that guidance around social media needs to be clarified.

11. Chilling effect

The vague provisions of the Act and as a consequence the frequent use of broad definitions by the Electoral Commission have resulted in a considerable amount of uncertainty among charities around whether and when these rules will apply. This is borne out by respondents, 85% of whom said that they were 'quite worried' or 'very worried' about the implications of the Lobbying Act for their campaigning activity.

Furthermore, a majority of respondents stated that they had made changes to normal campaigning activity in light of the Lobbying Act. Five charities (28%) withdrew from a planned or regular activity, 11 charities (61%) made changes to a planned or regular activity, and six charities (33%) postponed an activity until the end of the regulated period. Only five respondents made no changes to normal activity.

One respondent commented: 'There is increased caution about making policy points in case they should be seen as party political.' Another wrote: '[We feel] more wariness about supporting or engaging in activity, still unsure of what our responsibilities might be. Several others have expressed the same.'

We believe this demonstrates that the guidance produced by the Electoral Commission is insufficiently helpful for third party campaigners. Ambiguity over what activities are regulated can discourage charities from undertaking legitimate campaigning because of anxiety that their activities will fall under the scope of the Act.

12. Conclusion

Feedback from NCVO members suggests that the rules as amended by the Lobbying Act do not achieve the right balance between introducing necessary elements of transparency and establishing a proportionate regime that captures the type of activity that may have an influence on the election process.

In line with our earlier recommendations, and in consideration of the responses to our survey, NCVO proposes the following:

A clearer definition of regulated activity and controlled expenditure, so that charities carrying out legitimate non-partisan campaigning activity are confident about whether they are likely to come under the scope of the non-party campaigning rules.

Improvements to the definition should aim to remove uncertainty and to focus on partisan election campaigning. An improved definition should ensure that most purely issue focused campaigning is not drawn within the scope of electoral regulation, while still ensuring that the rules are not easily evaded by groups focused on issues with the intent to influence election outcomes.

Clearer and more practical guidance on the use of social media, to reduce as much as possible the need for burdensome social media monitoring.

A shorter regulated period, to bring rules for third party campaigners closer in line with rules for candidates. A reduced period would reflect the reality of campaigning activity that should be regulated – as most of the expenditure would be focussed on the months closest to the polling date. This would substantially reduce the administrative burden (as organisations would not have to register and forecast activity for an extended period of time) but would still capture the vast majority of activity that is likely to have an electoral effect.

Appendix 1: NCVO's work during the regulated period

Board paper and meetings

NCVO created a template Board paper for members to download and use as a template for discussions with trustees, to help them determine whether or not their organisation needed to register as a third party campaigner.

This template Board paper was downloaded a record 252 times. This indicates that there was a need among charities for guidance and support concerning their decision to register.

Using this paper as a guide, NCVO's own Board made the decision not to register under the Lobbying Act. However, the Board agreed that reviewing this decision should be made a standing agenda item.

Appendix 2: Responses to NCVO member survey regarding the Lobbying Act

Please note that questions were not mandatory, and therefore the total number of respondents to each question varies. In total the survey received 33 responses, 26 of which came from large charities (income over £1m), six from medium charities (income between £100,000-1m) and one from a small charity (income of £100,000 or lower).

Q1. How large is your charity?

Answer Choices	Responses	
Small (income of £100,000 or lower)	3.03%	1
Medium (income between £100,000 and £1 million)	18.18%	6
Large (income over £1 million)	78.79%	26
Total		33

Q2. What is your charitable purpose?

Answer Choices	Responses	
The prevention or relief of poverty	25.00%	8
The advancement of education	12.50%	4
The advancement of religion	0.00%	0
The advancement of health or the saving of lives	21.88%	7
The advancement of citizenship or community development	6.25%	2
The advancement of the arts, culture, heritage or science	0.00%	0
The advancement of amateur sport	0.00%	0
The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity	12.50%	4
The advancement of environmental protection or improvement	12.50%	4
The relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage	28.13%	9
The advancement of animal welfare	9.38%	3
The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services	0.00%	0
Any other charitable purposes	28.13%	9
Total Respondents: 32		

[Q3 asked for the name of the submitting organisation and has been redacted.]

Q4. Rate your general understanding of the Lobbying Act.

Answer Choices	Responses	
I don't understand it at all	0.00%	0
I have a vague understanding of it	37.04%	10
I am quite confident in my understanding of it	51.85%	14
I am very confident in my understanding of it	11.11%	3
Total		27

Q5. How confident do you feel about the difference between the Charity Commission's guidance on campaigning and political activities for charities (CC9) and the Electoral Commission's guidance for non-party campaigners?

Answer Choices	Responses	
Not at all confident	7.41%	2
Not particularly confident	44.44%	12
Neither confident nor unconfident	22.22%	6
Quite confident	18.52%	5
Very confident	7.41%	2
Total		27

Q6. How helpful do you rate the guidance produced by the Electoral Commission?

Answer Choices	Responses	
Not at all helpful	7.41%	2
Not particularly helpful	33.33%	9
Neither helpful nor unhelpful	29.63%	8
Quite helpful	25.93%	7
Very helpful	3.70%	1
Total		27

Q7. Did you get in touch with the Electoral Commission or the Charity Commission about the guidance or your campaigning activity?

Answer Choices	Responses	
Yes, with the Electoral Commission	22.22%	6
Yes, with the Charity Commission	7.41%	2
Yes, with both	22.22%	6
No	48.15%	13
Total		27

Q8. How do you feel about the implications of the Lobbying Act for your campaigning activity?

Answer Choices	Responses	
Very worried	29.63%	8
Quite worried	55.56%	15
Not at all worried	14.81%	4
Total		27

Q9. Did your organisation register, or consider registering, as a third party campaigner under the Lobbying Act?

Answer Choices	Responses	
Yes, my organisation registered	7.69%	2
No, my organisation did not register	46.15%	12
My organisation considered registering but did not	46.15%	12
Total		26

Why?

- Yes - for legal protection; to err on the side of caution and in the spirit of transparency.
- No – Board could not come to a decision; would not reach the spending limit; planned activity didn't pass the purpose test; changed campaigning activity so as not to fall under the Act because regulatory burden would be crippling; planned activity did not meet the spending limit, but may do so when the full regulated period comes into effect.

Q10. How long did the process of deciding to register take?

- A few weeks of internal discussion, learning more about the Bill (and then Act) plus a Board discussion.

Q11. If you registered, did you communicate this decision to your members and supporters?

Answer Choices	Responses	
Yes	0.00%	0
No	100.00%	2
Total		2

Why/why not?

- We felt our campaigning work would continue in largely the same way and that our members and supporters' experiences would not be noticeably different.

Q12. The Lobbying Act introduced spending limits for campaigning activity per constituency and per country (£319,800 in England or £9,750 per Parliamentary constituency). Did you track your campaign spend during the regulated period as a consequence of these limits?

Answer Choices	Responses	
Yes	28.57%	6
No	71.43%	15
Total		21

Q13. If you answered YES to question 12, did you come close to the constituency or national spending limits?

Answer Choices	Responses	
Yes, we came close to a national spending limit	0.00%	0
Yes, we came close to a constituency spending limit	16.67%	1
No, we did not come close to either a national or a constituency spending limit	83.33%	5
Total Respondents: 6		

Q14. Did you put any additional measures into place because of the Act? Tick all that apply.

Answer Choices	Responses	
Monitoring staff time	41.18%	7
Checking content on social media	94.12%	16
Discussing at board level about whether to register	70.59%	12
Seeking legal or external advice	52.94%	9
Tracking spending on regulated activities	41.18%	7
Total Respondents: 17		

Q15. Were there any campaigning activities that your organisation would normally have done during an election campaign that you decided not to do, that you changed, or that you postponed until the end of the regulated period?

Answer Choices	Responses	
No changes to normal campaigning	27.78%	5
Withdrew from a planned or regular campaigning activity	27.78%	5
Made changes to a planned or regular campaigning activity	61.11%	11
Postponed an activity until the end of the regulated period	33.33%	6
Total Respondents: 18		

Q16. Have you withdrawn from, declined to take part in, or had reservations about entering into a coalition campaign because of the Act?

Answer Choices	Responses	
Withdrawn from a coalition	0.00%	0
Declined to take part in a coalition	33.33%	2
Had reservations but took part anyway	66.67%	4
Total Respondents: 6		

Why?

- Our fear was that the coalition could have been seen to pass the purpose test and therefore with our spend and us passing the purpose test both us and the coalition (which is made up of lots of self-advocacy groups) would have needed to register. Whilst we always road-tested our plans against Charity Commission rules there was a second filters of ideas. When presenting plans to senior staff and trustees rather than asking one of the first questions was always 'Does this meet the lobbying Act'. We also felt more nervous at commenting in the media during the year and sometimes turned down opportunities to spread our message due to internal anxiety.
- The activity was long-standing and our input was limited to online support.

Q17. If you are involved in a coalition campaign, how has the Lobbying Act changed what you do in regard to reporting spending and activity?

Answer Choices	Responses	
We have made no changes	44.44%	4
We have made minor changes	55.56%	5
We have made significant changes	0.00%	0
Total		9

Q18. Do you have any other comments on how the Act has or has not affected your experience of campaigning in a coalition with other charities?

- It hasn't at all. Be interested to see who has changed activity. And, if anyone is "prosecuted" under the Act.
- There is increased caution about making policy points in case they should be seen as party political.
- As an organisation with affiliated local groups, we had major concerns over how little knowledge there was about the Lobbying Act. On several occasions groups participated in local and national coalitions whose activities may have been seen to pass the purpose test. This showed that there was not enough done by the Commissions to show how what can be every day activities or how their role in coalitions could be affected. We also found that the guidance from the Electoral Commission to be heavily weighted against coalitions, making organisations fearful of the actions taken by the other members - even when not in the name of the coalition. This prevented many of our local groups from campaigning.
- More wariness about supporting or engaging in activity, still unsure of what our responsibilities might be. Several others have expressed the same.
- I think it's added to a feeling of caution in the sector.
- It made the organisation much more risk averse.

Q19. How confident do you feel about how to categorise people as committed supporters or members of the public?

Answer Choices	Responses	
Not at all confident	6.25%	1
Not particularly confident	25.00%	4
Neither confident nor unconfident	18.75%	3
Quite confident	43.75%	7
Very confident	6.25%	1
Total		16

Q20. Have you changed the way you communicate with the following?

Answer Choices	Responses	
Members of the public	90.00%	9
Supporters or members of your organisation	90.00%	9
Total Respondents: 10		

Q21. If you answered YES for either option on question 20, which of these changed?

Answer Choices	Responses	
Direct mailings	55.56%	5
Email communication	88.89%	8
Social media, eg Twitter and Facebook	100.00%	9
Phone or face-to-face engagement	33.33%	3
Other (please specify)	11.11%	1
Total Respondents: 9		

#	Other (please specify)	Date
1	Use of online petition sites (eg Care2)	5/22/2015 2:06 PM